

SECOND REGULAR SESSION

# SENATE BILL NO. 710

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CAUTHORN.

Pre-filed December 1, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3465S.02I

## AN ACT

To repeal section 335.066, RSMo, and to enact in lieu thereof two new sections relating to complaints against licensed nurses.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 335.066, RSMo, is repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 335.066 and 335.098, to read as  
3 follows:

335.066. 1. The board may refuse to issue any certificate of registration  
2 or authority, permit or license required pursuant to sections 335.011 to 335.096  
3 for one or any combination of causes stated in subsection 2 of this section. The  
4 board shall notify the applicant in writing of the reasons for the refusal and shall  
5 advise the applicant of his or her right to file a complaint with the administrative  
6 hearing commission as provided by chapter 621, RSMo.

7 2. The board may cause a complaint to be filed with the administrative  
8 hearing commission as provided by chapter 621, RSMo, against any holder of any  
9 certificate of registration or authority, permit or license required by sections  
10 335.011 to 335.096 or any person who has failed to renew or has surrendered his  
11 or her certificate of registration or authority, permit or license for any one or any  
12 combination of the following causes:

13 (1) Use or unlawful possession of any controlled substance, as defined in  
14 chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a  
15 person's ability to perform the work of any profession licensed or regulated by  
16 sections 335.011 to 335.096;

17 (2) The person has been finally adjudicated and found guilty, or entered  
18 a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 of any state or of the United States, for any offense reasonably related to the  
20 qualifications, functions or duties of any profession licensed or regulated  
21 pursuant to sections 335.011 to 335.096, for any offense an essential element of  
22 which is fraud, dishonesty or an act of violence, or for any offense involving moral  
23 turpitude, whether or not sentence is imposed;

24 (3) Use of fraud, deception, misrepresentation or bribery in securing any  
25 certificate of registration or authority, permit or license issued pursuant to  
26 sections 335.011 to 335.096 or in obtaining permission to take any examination  
27 given or required pursuant to sections 335.011 to 335.096;

28 (4) Obtaining or attempting to obtain any fee, charge, tuition or other  
29 compensation by fraud, deception or misrepresentation;

30 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation  
31 or dishonesty in the performance of the functions or duties of any profession  
32 licensed or regulated by sections 335.011 to 335.096;

33 (6) Violation of, or assisting or enabling any person to violate, any  
34 provision of sections 335.011 to 335.096, or of any lawful rule or regulation  
35 adopted pursuant to sections 335.011 to 335.096;

36 (7) Impersonation of any person holding a certificate of registration or  
37 authority, permit or license or allowing any person to use his or her certificate of  
38 registration or authority, permit, license or diploma from any school;

39 (8) Disciplinary action against the holder of a license or other right to  
40 practice any profession regulated by sections 335.011 to 335.096 granted by  
41 another state, territory, federal agency or country upon grounds for which  
42 revocation or suspension is authorized in this state;

43 (9) A person is finally adjudged insane or incompetent by a court of  
44 competent jurisdiction;

45 (10) Assisting or enabling any person to practice or offer to practice any  
46 profession licensed or regulated by sections 335.011 to 335.096 who is not  
47 registered and currently eligible to practice pursuant to sections 335.011 to  
48 335.096;

49 (11) Issuance of a certificate of registration or authority, permit or license  
50 based upon a material mistake of fact;

51 (12) Violation of any professional trust or confidence;

52 (13) Use of any advertisement or solicitation which is false, misleading or  
53 deceptive to the general public or persons to whom the advertisement or  
54 solicitation is primarily directed;

55 (14) Violation of the drug laws or rules and regulations of this state, any  
56 other state or the federal government;

57 (15) Placement on an employee disqualification list or other related  
58 restriction or finding pertaining to employment within a health-related profession  
59 issued by any state or federal government or agency following final disposition by  
60 such state or federal government or agency.

61 3. After the filing of such complaint, the proceedings shall be conducted  
62 in accordance with the provisions of chapter 621, RSMo. Upon a finding by the  
63 administrative hearing commission that the grounds, provided in subsection 2 of  
64 this section, for disciplinary action are met, the board may, singly or in  
65 combination, **assess a fine as determined by the criteria set forth under**  
66 **subsection 4 of this section**, censure or place the person named in the  
67 complaint on probation on such terms and conditions as the board deems  
68 appropriate for a period not to exceed five years, or may suspend, for a period not  
69 to exceed three years, or revoke the license, certificate, or permit.

70 4. **In assessing a fine under subsection 3 of this section, the range**  
71 **of fines shall be from one to five hundred dollars, and in no case shall**  
72 **the fine exceed five hundred dollars for each violation. The board shall**  
73 **consider the following factors in determining the extent of the fine to**  
74 **be assessed:**

75 (1) **Gravity of the violation;**

76 (2) **History of previous violations of the same or a similar nature;**

77 (3) **Length of time that has passed since the date of the violation;**

78 (4) **Consequences of the violation, including potential or actual**  
79 **patient harm;**

80 (5) **The good or bad faith exhibited by the licensee;**

81 (6) **Evidence that the violation was willful;**

82 (7) **The extent to which the licensee cooperated with the board's**  
83 **investigation;**

84 (8) **The extent to which the licensee has remediated any**  
85 **knowledge or skills deficiencies which could have injured a patient;**

86 (9) **Any other mitigating or aggravating factors.**

87 5. An individual whose license has been revoked shall wait one year from  
88 the date of revocation to apply for relicensure. Relicensure shall be at the  
89 discretion of the board after compliance with all the requirements of sections  
90 335.011 to 335.096 relative to the licensing of an applicant for the first time.

91           **[5.] 6.** The board may notify the proper licensing authority of any other  
92 state concerning the final disciplinary action determined by the board on a license  
93 in which the person whose license was suspended or revoked was also licensed of  
94 the suspension or revocation.

95           **[6.] 7.** Any person, organization, association or corporation who reports  
96 or provides information to the board of nursing pursuant to the provisions of  
97 sections 335.011 to 335.259 and who does so in good faith shall not be subject to  
98 an action for civil damages as a result thereof.

**335.098. 1.** For any complaint against a licensee, other than a  
2 **complaint by an individual incarcerated or under the care and control**  
3 **of the department of corrections under section 335.068, the provisions**  
4 **of this section shall apply.**

5           **2.** If the board finds merit to a complaint against a licensee and  
6 takes further investigative action, documentation may appear on file  
7 only if public disciplinary action is taken in regard to the licensee's  
8 license under section 335.066. If the board finds no merit to a  
9 complaint against a licensee and takes no further action, the case shall  
10 be closed without merit and no public disciplinary action shall be  
11 taken. Upon final case disposition by the board where public action  
12 was taken, the documentation may appear on file as closed with merit  
13 and no further action shall be taken. Any case file documentation that  
14 does not result in public disciplinary action by the board under section  
15 335.066 shall be destroyed within six months of the final case  
16 disposition by the board. No notification to any other licensing board  
17 in another state or any national registry regarding any investigative  
18 action shall be made unless public disciplinary action is taken by the  
19 board with regard to the complaint.

20           **3.** Upon written request of the licensee subject to a complaint,  
21 prior to August 28, 2006, by an individual that did not result in the  
22 board imposing public disciplinary action under section 335.066, the  
23 board and the division of professional registration shall:

24           **(1)** Destroy all documentation regarding the complaint within six  
25 months of the request;

26           **(2)** Notify any other licensing board in another state or any  
27 national registry regarding the board's action if they have been  
28 previously notified of the complaint; and

29           **(3)** Send a letter to the licensee that clearly states that the board

30 **found the complaint to be unsubstantiated, that the board has taken the**  
31 **requested action, and notify the licensee of the provisions of subsection**  
32 **4 of this section.**

33 **4. Any person who has been the subject of an unsubstantiated**  
34 **complaint as provided in subsections 1 and 2 of this section shall not**  
35 **be required to disclose the existence of such complaint in subsequent**  
36 **applications or representations relating to their nursing professions.**

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Bill

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